



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Andy Williams

1 IBIA 195 (11/30/1971)

Also published at 78 Interior Decisions 346

ESTATE OF ANDY WILLIAMS

IBIA 72-4

Decided November 30, 1971

SYLLABUS

Indian Probate: Reopening: Waiver of Time Limitation

A petition to reopen filed more than thirty years after entry of the order determining heirs and at least seven years after the petitioner acquired the belief that she was related to the decedent without explanation for the delay will be denied for the reason that the petitioner has been dilatory in submitting her petition.



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF ANDY WILLIAMS

) Reopening Denied

) IBIA 72-4

Probate No. 42945-40

) November 30, 1971

This matter is before the Board upon the petition of Messie Mix for the reopening of the Estate of Andy Williams, Probate No. 42945-40. 1/ The Petition for Reopening 2/ was originally filed with the Sacramento Area Office, Bureau of Indian Affairs, and was forwarded to the Hearing Examiner, Alexander H. Wilson, with the recommendation that the Estate of Andy Williams be reopened. In forwarding the petition to this Board, the Hearing Examiner has included transcripts of testimony, taken in the related cases of Ella Short Pada, 3/ Probate No. 49694-38, Conom Pada, aka Connan Pedee, 4/ Probate No. F-110-64, circa 1964, and Stella Anita Williams, 5/ Probate No. F-23-71, circa 1970. Since more than three

---

1/ The final order closing this estate, viz., Order Determining Heirs, was entered July 29, 1940.

2/ The petition itself is an undated, one-paragraph document, notarized on July 12, 1971, stating: "I, Messie Mix, petition the estate of Andy Williams, Probate No. 42945-40 be reopened on the basis I did not inherit in the estate as a surviving daughter nor did I receive a notice of the estate hearing to enable me to attend such a hearing and offer my testimony about my father and mother."

3/ The petitioner's mother.

4/ The second husband of petitioner's mother, Ella Short Pada. The Summary of Report on Heirs in the Ella Short Pada probate file shows Conom Pada to be the petitioner's father.

5/ A daughter of the decedent, Andy Williams, by his second wife, Mamie Jim Stonecoal Williams.

years has elapsed following the entry of the Order Determining Heirs, the Examiner's jurisdiction was exhausted and he properly forwarded the petition to this Board for its determination whether the discretion retained by the Secretary to waive regulations should be exercised herein. 6/

The decedent having died intestate, his estate was distributed under the California laws of descent and distribution in equal shares to three children, Evelyn Williams O'Neill, Theodore John Williams, and Stella Anita Williams. The estate originally consisted of four allotments in California having a total appraised value of \$2,371.67. Three of the allotments have since been disposed of and the only remaining asset of the estate is the fourth allotment which is presently valued at \$2,200.

The factual question raised by the petitioner is whether the decedent, Andy Williams, or Conom Pada, was the petitioner's father. No point would be served by a lengthy recital of the evidence contained

---

6/ Pursuant to 25 CFR 1.2 "the Secretary retains the power to waive or make exceptions to his regulations . . . in all cases where permitted by law and . . . such waiver or exception is in the best interest of the Indians." See Estate of George Minkey, 1 IBIA 1 (1970), *aff'd* on reconsideration, 1 IBIA 56 (1970) and Estate of Eliza Shield Him, 1 IBIA 80 (1971). The three-year limitation itself appears in 43 CFR § 4.242(a), 36 F.R. 7197 (April 15, 1971).

in the various probate files which constitute the record in this proceeding. Suffice it to say that at the hearing held herein in 1940, substantial evidence was introduced to the effect that Andy Williams had six children; that he left only the three above-named children living at the time of his death and that the other three children died in infancy. The petitioner, Messie Pada, has testified, on both sides of the question relating to her paternity. Thus, at the hearing in her mother's estate in 1938 the petitioner, who was 22 years old at the time, testified that her father was Conom Pada, 2/ and that her mother had no children by Andy Williams. However, at an Indian probate hearing in 1964 in the Estate of Conom Pada, the petitioner testified that her father was Andy Williams. She has not indicated why she changed her testimony or from what source the most recent theory of her paternity stemmed, if there was such a source. We can only conclude that this is a change of mind on her part not produced by "newly discovered" evidence.

We held in Estate of Samuel Picknoll (Pickernell), 1 IBIA 168, 78 I.D. 325 (1971), that as prerequisites to the exercise of Secretarial discretion to grant petitions for reopening filed beyond the three-year limitation, it must appear from the record, including the petition and

---

7/ Veline Pada, a daughter of Conom Pada and Ella Short Pada whose parentage is not in doubt, also testified therein that Petitioner's father was Conom Pada.

its supporting affidavits or documentation, that: (1) the petitioner has been diligent in asserting his claim; (2) the original probate determination resulted from fraud, accident or mistake of such a compelling nature that a manifest injustice will occur unless reopening is granted; and (3) there exists a strong possibility that the petitioner, upon reopening will be able to carry his burden of proof and establish his claim by a preponderance of the evidence.

We doubt that petitioner would be able to sustain her burden of proof if the matter were reopened. The original determination in the Andy Williams' probate matter in 1940 was supported by substantial evidence in the record at that time. The record as it now stands also contains substantial support for the original decision. The petitioner has made no allegation of or showing of fraud, accident, or mistake. Nor is the petition itself supported by affidavits or documentation which indicate that a manifest injustice has occurred or which demonstrate a likelihood that she would prevail if this case were reopened. 8/

---

8/ The petition is not supported by affidavits from persons who would be in a position to give testimony of probative value on petitioner's behalf or by birth certificates, letters, church records, or similar memorabilia. The file does contain a letter from Mrs. Frances Pada Martinez, whose relationship to the petitioner is not shown. Mrs. Martinez alleges that her (Mrs. Martinez) mother and the decedent were both present when the petitioner was born at Alturas, California, on June 2, 1916, and that her mother told her that the petitioner was one year and four months when Ella Short married Conom Pada. Mrs. Martinez also states that the petitioner's birth certificate shows her name to be Missie (sic) William Pada."

Finally, it appears that the petitioner has been dilatory in pursuing her claim. There is no explanation why she permitted more than 30 years to pass before filing her petition. Even after testifying at the 1964 hearing that she was the daughter of the decedent, she waited an additional seven years before seeking reopening. In such circumstances, the original probate determination will not be disturbed. Estate of Samuel Picknoll (Pickernell), *supra*; Estate of Abel Gravelle, IA-75 (Apr. 11, 1952).

Accordingly, pursuant to the authority delegated to the Board of Indians Appeals by the Secretary of the Interior, 211 DM 13.5; 35 F.R. 12081, the petition of Messie Mix for reopening is denied and the Order Determining Heirs entered herein on July 29, 1940, by Oscar L. Chapman, Assistant Secretary, is affirmed. This decision is final for the Department.

\_\_\_\_\_  
//original signed  
Michael A. Lasher, Alternate Member  
Board of Indian Appeals

Concur:

\_\_\_\_\_  
//original signed  
David J. McKee, Chairman  
Board of Indian Appeals

Dated: November 30, 1971.